REMARKS

1. In response to the Office Action mailed June 30, 2008, Applicant respectfully requests reconsideration. Claims 1-38 were originally presented for examination. In the outstanding office action claims 1-38 are rejected. By the foregoing Amendments, claims 1-10, 18-20, 22, 27-30 and 38 have been amended. Thus, upon entry of this paper, claims 1-38 will remain pending in this application. Of these 38 claims, two (2) claims (claims 1 and 20) are independent.

2. Based upon the above Amendment and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

Claim Rejections Under 35 U.S.C. §102(b)

3. The Examiner has rejected claims 1-4, 7-14, 20-24, 27-34 and 38 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,157,861 to Faltys et al. ("Faltys"). Applicants respectfully submit that for at least the below stated reasons, the rejection of the pending claims should be reconsidered and withdrawn.

4. Faltys discloses a self adjusting implantable cochlear implant system. Particularly, Faltys discloses determining coarse thresholds for a patient by "providing a known input signal to the [implanted cochlear stimulator] ICS from the [speech processor] SP 30 over the signal line 20 and measuring the resulting output stapedius reflex response." *See* Col. 10, line 8-15 of Faltys. These coarse thresholds are then used to determine an initial stimulus amplitude for each selected channel, which in turn is used to zero-in on the evoked potential threshold of each channel individually. *See* Col. 11, line 38 – Col. 12, line 21. Particularly, as discussed in relation to FIG. 3B, "In order to 'zero-in' on [a] threshold…a first channel is selected (block 132). An initial stimulus amplitude is then set at a value near the previously determined stapedius threshold for the selected channel, and an appropriate adjustment interval Δ_{INT}, is specified (block 134)." *See* col. 11, line 38-48. Faltys further states that "After sufficient samples of evoked potential have been obtained for the first channel, the process repeats for the other channels." *See* col. 12, line 19-21. In other words, Faltys uses these evoked response measurements to individually

determine the evoked potential thresholds for each channel in the array. Once the threshold level is set for one channel, the Faltys system performs the procedure for the next channel, and so on, until each channel threshold level has been set.

5. Applicants independent claim 1, as amended, recites, a method of fitting an auditory stimulation system having a plurality of channels to a recipient, the method comprising:

> establishing an initial current level profile comprising a current level setting for each of at least some of the plurality of channels ;
> applying stimulation using the initial current level profile;
> obtaining a response to the applied stimulation; and
> adjusting a plurality of the current level settings of the initial current level profile based on the obtained response. *See* Applicants claim 1, above.

6. Faltys does not, however, teach or suggest "adjusting a plurality of the current level settings of the initial current level profile based on [an] obtained response," as recited in claim 1. Each of Faltys adjustment intervals are performed on an individual channel at a distinct period in the adjustment procedure. And, as such, Faltys only deals with one channel at a time, and only adjusts one channel at a time. Thus, Faltys does not teach or suggest adjusting a plurality of current levels settings for a plurality of stimulation channels based on an obtained response. Accordingly, Applicants respectfully submit that independent claim 1 is allowable over the cited references for at least these reasons.

7. Independent claim 20 as amended, recites in part "a programming apparatus… comprising: …means for substantially simultaneously adjusting a current level setting of at least two channels based on an obtained result of the plurality of channels to alter the current level profile of the channel array." As such, Applicants respectfully submit that for at least similar reasons to those discussed above, independent claim 20 is likewise in condition for allowance.

8. Applicants accordingly respectfully request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §102 for at least the above stated reasons.

Dependent Claims

9. The dependent claims their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Improper Omnibus Rejections

10. In rejecting the claims, the Office Action lumped large groups of claims together without identifying for each of the rejected claims the specific reasons why the claims were rejected. In other words, the Office Action fails to address the claim elements of each rejected claim and has only provided an uninformative and improper omnibus rejection for many of these claims. As an example, in paragraph 3 of the Office Action, claims 1-4, 20-22, and 38 were all rejected together in one large group. This rejection only encompassed two sentences and did not specifically identify any of the recited elements in the rejected claims, nor what, if any, disclosure of the cited references corresponds to such elements.

11. It is well recognized that omnibus rejections are improper and are to be avoided under the examination guidelines provided in the MPEP. (*See*, MPEP § 707.07(d), explaining that a "plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.")

12. Moreover, 37 C.F.R. 1.104(c)(2) recites that in rejecting claims, "when the reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on [by the Examiner] **must be designated** as nearly as practicable [and] [t]he pertinence of each reference if not apparent, must be clearly explained **and each rejected claim specified**." (*emphasis added; also see,* MPEP § 706, "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process.") In rejecting the present claims, despite the complexity of the relied on references, the Examiner merely cited the references and failed to designate the particular disclosure in the reference, if any, that the Examiner was relying on in asserting that the cited references disclose each and every element of the rejected claim. As such, Applicants respectfully submit that the Examiner's rejections failed to satisfy 37 C.F.R. 1.104(c)(2), and as such the rejections were improper. Applicants therefore respectfully request that the rejections be reconsidered and withdrawn for at least this additional reason.

37 C.F.R. §1.104(d)(2)

13. Claims 5,6, 15-19, 25-26, and 35-37, were rejected the under 35 U.S.C. §103. The sole reference relied on was the above-discussed Faltys reference. In rejecting these claims the Examiner appears to be relying on his personal knowledge for allegedly teaching those elements admittedly missing from Faltys. Accordingly, Applicants requests that the Examiner provide an Affidavit/Declaration under 37 C.F.R. § 1.104(d)(2) supporting the statements of fact that are within the personal knowledge of the Examiner and upon which the Examiner has relied on or alternatively provide a reference teaching those elements missing from Faltys.

Conclusion

14. In view of the foregoing, Applicants respectfully submit that this application is now in condition for allowance. A notice to this effect is respectfully requested.

15. Applicants make no admissions by not addressing any outstanding rejections or basis of rejections. Furthermore, Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Thus, cancellations and amendments of above claims are not to be construed as an admission regarding the patentability of any claims.

Dated: December 29, 2008

Respectfully submitted,

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